SUPREME COURT OF THE UNITED STATES.

No. 169.

CHARLES B. WEAVER, PLAINTIFF IN ERROR,

vs.

ISAAC FEGELY AND JACOB FEGELY, DOING BUSINESS UNDER THE FIRM OF FEGELY & BROTHER.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT, AT HARRISBURGH.

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GIDEON, Print.

Among the records of the court of common pleas of Berks county, State of Pennsylvania, it is thus contained:

[L. S.]

Appearance Docket, entry to August Term, 1855.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother,	Filbert. 27.
vs.	
CHARLES B. WEAVER.	J. A. Banks.

April 23, 1855.—Statement filed.

Summons in debt on balance of book accounts, dt. $157 62. Issued April 23, 1855.

Writ and tax paid.
69 due.
150 due.
Plff's bill, $6 21.
Appeal.
Deft. sut. 25 due.
Plff. " 25 "
Deft. sut. 25 due.
Plff. su. 25 "
Plff's bill, $14 73.

April 24, 1855, the plaintiffs, by their attorney, enter their determination to choose arbitrators on the 16 day of May, at 1 p. m. April 30, 1855, served personally by a true and attested copy. May 16, 1855, parties, by their attorneys, appear and concur in choosing Henry Rhoads, Maybery Bertolett, and E. P. Darling, arbitrators, who are to meet at the court-house on the 2d day of June, 1855, at 1 p. m. June 2, 1855, award of arbitrators filed, finding in favor of the plaintiff the sum of one hundred and fifty-nine dollars, with costs of suit. June 20, 1855, defendant makes oath, enters into recognizance, pays costs, and appeals. See Acct. B, page 41. Oct. 6, 1855, deft., by his counsel, pleads non-assumpsit, with leave to alter, &c., and issue. Nov. 2, 1855, deft. pleads nil debet, payment with leave, &c. Jan. 14, 1856, continued on payment of costs of term by defendant. (See trial list.)

April 22, 1856. And now, to wit, a jury being balloted for, drawn, and called, came, to wit: Adam Waid, Christian Decker, William Davis, John Dunkle, William King, Michael Kreamer, John Babb, William Foust, Jonathan Gicker, John Strohecker, Isaac N. Kilmer, and Henry C. Croll, twelve free, lawful, and judicious men of the county of Berks, who upon their solemn oaths and affirmations, respectively, do say that they find in favor of the plaintiff one hundred and sixty-seven dollars and ninety-five cents debt, and six cents costs. April 23, 1856, verdict fee paid by P. Filbert, esq. See Acct. Book, page 92, and judgment. May 10, 1856, recognizance filed. May 13, 1856, writ of error filed. May 21, 1857, charge of court filed.

STATE OF PENNSYLVANIA,
Berks County, ss.

I, Josiah Hearing, prothonotary of the court of common pleas of Berks county, State aforesaid, do certify that the foregoing is a full, true, and correct copy of the docket entries in the foregoing suit, which, with the papers hereunto annexed, forms the whole record in said case.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Reading, this 21 day of May, 1857. [L. S.]

JOSIAH HEARING, *Proth'y.*

BERKS COUNTY, *ss.*

The Commonwealth of Pennsylvania to the Sheriff of Berks county, greeting:

We command you that you summon Charles B. Weaver, so that he may appear before our court of common pleas, to be held at Reading, in and for said county, on the first Monday of August next, to answer Isaac Fegely and Jacob Fegely, doing business under the firm of Fegely & Brother, of a plea in debt on balance of book accounts, dt. $157 62, and have you then and there this writ.

Witness the Honorable J. Pringle Jones, esquire, president of said court, the 23d day of April, A. D. 1855.

JOSIAH HEARING,
Prothonotary.

(*Endorsed:*)

27, August Term, 1855.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother,
vs.
CHARLES B. WEAVER.

Sum's in debt on balance of book accounts. Dt. $157 62.

Sh'ff warrant, $2 40½.

April 30, 1855.—Served personally by a true and attested copy. So answer—

JOHN MANDERBACH, *Sh'ff.*
FILBERT, *Att'y.*

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother,
vs.
CHARLES B. WEAVER.

Issue sums in debt on balance of book accounts.
Debt, $157 62—to Aug. 7, 1855.

P. FILBERT, *Att'y for Pl'ffs.*

April 23, '55.

To JOSIAH HEARING, Esq., *Proth'y.*

The above suit is brought by the pl'ffs to recover from the def't the sum of one hundred and fifty-seven $\frac{62}{100}$ dollars, a balance on a settlement of their mutual accounts, which was made on the 19th of March, A. D. 1855. On that day, the said def't having fallen so much in the debt of the said pl'ffs, they bring this suit to recover it, with interest, from the said 19th day of March, 1855.

PETER FILBERT,
Att'y for Pl'ffs.

April 23, '55.

Filed April 23, 1855.

In the Court of Common Pleas of Berks county—Of the Term of August, 1855.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother, vs. CHARLES B. WEAVER. } No. 27.

The plaintiffs above named, by their attorney, do hereby aver and declare that it is their determination to have arbitrators chosen, at the office of the prothonotary of the court of common pleas, for the county aforesaid, on the day of at 1 o'clock in the afternoon, for hearing and determining all matters at variance between the parties in the above suit, and do hereby request the prothonotary to enter a rule of reference for that purpose, agreeably to an act to regulate arbitrations.

Witness my hand this 24th day of April, one thousand eight hundred and fifty-five.

PETER FILBERT,
Att'y for Pl'ffs.

To JOSIAH HEARING, *Prothonotary.*

Filed April 24, 1855.

In the Court of Common Pleas of Berks county—Of the Term of August, 1855.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother, vs. CHARLES B. WEAVER. } No. 27.

The plaintiffs above named, by their attorney, do hereby aver

and declare that it is their determination to have arbitrators chosen, at the office of the prothonotary of the court of common pleas, for the county aforesaid, on the 16th day of May, at 1 o'clock in the afternoon, for hearing and determining all matters at variance between the parties in the above suit, and do hereby request the prothonotary to enter a rule of reference for that purpose, agreeably to an act to regulate arbitrations.

Witness my hand this 24th day of April, one thousand eight hundred and fifty-five.

PETER FILBERT,
Att'y for Pl'ffs.

To JOSIAH HEARING, *Prothonotary.*

BERKS COUNTY, *ss.*

I certify the foregoing to be a true copy of the original filed of record in the prothonotary's office of the county aforesaid.

In testimony whereof, I have hereunto set my hand and seal of
[L. S.] said court, at Reading, the day and year aforesaid.

JOSIAH HEARING,
Prothonotary.

BERKS COUNTY, *ss.*

Henry H. Manderbach, being duly sworn, says that he served a copy of the within notice, personally, on Charles B. Weaver, on the 30th day of April, A. D. 1855.

H. H. MANDERBACH.

Sworn and subscribed before me this 1st day of May, 1855.
JOSIAH HEARING.

Filed May 1, 1855.

In the Court of Common Pleas of Berks county—Of August Term, 1855.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother, vs. CHARLES B. WEAVER. } No. 27.—Action.

I certify, that agreeably to an act of assembly, entitled "An act relating to reference and arbitration," all matters in variance in this suit, between the parties, are referred to Henry Rhoads, Maybery Bertolett and E. P. Darling, arbitrators appointed according to law, who are to meet at the court-house in the city of Reading, on the 2d day of June, 1855, at 1 o'clock in the afternoon, and they, or a majority of them, or such other persons as may be substituted in pursuance of said act, are to make report of their determination into the prothonotary's office, at Reading,

within seven days after they have agreed upon the same; the arbitrators receiving ten days' notice, previous to the time of meeting.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Reading, the 16th day of May, A. D. 1855. [L. S.]

JOSIAH HEARING,
Prothonotary.

The undersigned arbitrators, having met at the time and place above mentioned, and having been sworn according to law, and having heard the parties, their proofs and allegations, do find in favor of the plaintiffs the sum of one hundred and fifty-nine dollars with costs of suit. Witness our hands this 2d day of June, 1855.

H. RHOADS,
MAYBURY A. BERTOLET,
E. P. DARLING.

Costs.....$3 00
Room..... 1 25

$4 25; paid by pl'ff.

Charles B. Weaver, the defendant within named, who appeals from the within award of arb's, being duly sworn according to law, doth depose and say, that such appeal is not entered for the purpose of delay, but because he firmly believes injustice has been done him.

C. B. WEAVER.

Sworn and subscribed before me, this 20th day of June, A. D. 1855.

JOSIAH HEARING, *Prot.*

Filed June 2, 1855.

In the Common Pleas of Berks county—Of the Term of August, 1855.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother,
vs.
CHARLES B. WEAVER.

No. 27.—Sur Report of Arbitrators.

We, C. B. Weaver and W. W. Weaver, acknowledge ourselves to be indebted to the above named Isaac Fegely and Jacob Fegely, in the sum of two hundred dollars, lawful money of the United States, to be made and levied of our proper goods and chattels, lands and tenements.

Whereas Charles B. Weaver, the above named defendant, has

this day entered an appeal from the report of the arbitrators in the above cause, with the prothonotary of the county of Berks, to the court of common pleas of the same county, agreeably to the provisions of the act of assembly in such case made and provided:

Now the condition of this recognizance is such, that if the said appellant shall pay all costs accrued or that may be legally recovered in the above case against the said appellant, then this recognizance to be void, otherwise the same to remain in full force.

C. B. WEAVER,
W. W. WEAVER.

Cognt. coram me, June 20, 1855.

JOSIAH HEARING, *Proth'y.*

Filed June 20, 1855.

ISAAC FEGELY & BROTHER
vs.
CHARLES WEAVER.
} Augt. T., 1855.

Arbitration June 2, 1855.

Pl'ff's Bill of Costs.

Henry Straught, witness, 1 day	50
Arbitrators, 1	3 00
Mileage of witness, 16 miles	96
Serving subpœna on wit	10
Serving rule on arb. and def't	40
	$4 96
Room and sta	1 25
	$6 21

June 2, 1855.

I certify that the above bill of costs is correct.

W. F. FILBERT,
Att'y for Pl'ff.

Filed June 2, 1855.

FEGELY & BROTHER
vs.
CHARLES B. WEAVER.

Pl'ff's Bill of Costs.

Costs at the trial April 22, '56—		
Subpœna on two witnesses and service		$1 40
Henry Straught, 2 days	1 25	
16 miles	96	
		2 21
John Baenema, 2 days	1 25	
18 miles	1 08	
		2 33

3709

At January continued generally—	
Subpœna and witness and service	1 33
Henry Strauch, 4 days	2 50
16 miles	96
Jury fee paid	4 00
	$14 73

PETER FILBERT,
Att'y for Pl'ffs.

Filed April 24, 1856.

ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother, vs. CHARLES B. WEAVER. } In the Court of Common Pleas of Berks county, No. 27, of August Term, 1855.

Writ of Error sued out by the Defendant.

BERKS COUNTY, *ss.*

Charles B. Weaver, William W. Weaver and Abraham Gabel, each acknowledge to owe and stand indebted to Isaac Fegely and Jacob Fegely, doing business under the firm of Fegely & Brother, in the sum of four hundred dollars, to be levied of their goods and chattels, lands and tenements, respectively, upon this condition, that the above named Charles B. Weaver, plaintiff in error, prosecute his writ of error with effect; and if the judgment be affirmed, or the writ of error be discontinued or non-pros'd, to pay the debt, damages, and costs adjudged upon said judgment, and all other damages and costs that may be awarded upon said writ of error.

Taken and acknowledged before me, this tenth day of May, 1856.

C. B. WEAVER,
W. W. WEAVER,
ABRAHAM GABEL.

JOSIAH HEARING, *Proth'y.*

Filed May 10, 1856.

FEGELY & BROTHER vs. C. B. WEAVER. } C. P. Berks. No. 27, Aug. 3, 1855.

It does not appear from any act of Congress of the United States that Congress has at any time exercised the power conferred upon it by art. 1, § VIII, sub-section V, of the Constitution, to "fix the standard of weights and measures," other, perhaps, than by determining the unit of weight and measure. No act is produced, by which Congress has at any time declared how many pounds shall make a ton. It is strange if there be not such an act; but

we know of none such, and therefore treat the question as though there were none.

Justice Story observes, 3 Const. U. S., 20, 21, that hitherto this power has remained dormant, from the many difficulties attendant upon the subject, although it has been repeatedly brought to the attention of Congress in most elaborate reports; and that, until Congress shall fix a standard, the understanding seems to be that the States possess the power, or, at least, that the standards existing at the adoption of the Constitution remain in force. Among those who have written reports on this subject may be particularly mentioned Mr. Jefferson and Mr. John Quincy Adams, each of whom reported officially whilst at the head of the State Department. The paper of the former is to be found in vol. VII, p. 472, of the writings of Jefferson, edition of 1854, and goes to show that the English weights and measures are of an indefinite antiquity, reaching behind all the statutes upon the subject which are known to us.

At the time of the adoption of the Constitution the standards of weight and measure, which existed in the several States, were either at common law or by statutes of England, or by statutes of the several States. A standard could only exist in one of those ways, and there may well have been some diversity, by legislation, between the standards of the several States. But supposing there was no diversity, and that the ton was the same in all the States; it was so only at common law, or by a statute of England in force in the several colonies, and not repealed at the Revolution. The colonies had the common law as an inheritance, but the federal government had it not. In the colonies it was so modified by their several local wants and necessities, and by their several legislatures, that at the time of the adoption of the U. S. Constitution there could not be said to be any American common law, universally received and accepted as such in all the States. Was the common law brought into Virginia the same as that brought into Georgia a century and nearly a half later? The common law was not the same in England at those two points of time.

It would be impossible to say what common law the U. S. inherited. The States had no homogeneous common law to confer. The new government could not overleap the States and go to England for a common law, more than half of which was rejected by its own creators. Especially could it not do that by any implication from the Constitution. I know that there is a difference of opinion about this, but it was a political difference as well as a legal one.

But if the regulation of weights and measures was not at common law, then it was by British statute, which pre-existed the Revolution. No such statute, certainly, can have any authority in the U. S. proprio vigore, nor in any way; it must be enacted by Con-

gress, and so made law of the land. Many a British statute bound all the colonies, and is to this day received as statute law by the States, which grew out of those colonies. But that statute law was not transferred to the U. S. when the Constitution was formed and accepted. It would be a strange thing if the law of the U. S. was to be found in the statutes of any other country.

Whether, then, the system of weights and measures which existed prior to the adoption of the Constitution was at common law, or by British statute—and I rather incline to the opinion that it was by statute—the jurisdiction of the subject was vested in Congress. Any exercise of the power to fix the standard by Congress would be exclusive of the States. Doubtless Congress in many revenue and other acts has legislated with reference to the universal usage of the country, and in speaking of the ton, or the pound, or the acre, or the bushel, has had reference to that usage. That, however, is not a fixing of the standard. The several States may legislate upon the subject as long as its ground is not covered by national legislation. Pennsylvania has so legislated with regard to the ton, and we believe her action to be constitutional and valid, in the absence of national legislation.

The plaintiff in this case is entitled to recover for 79 tons 1,286 pounds of coals, sold and delivered to the defendant, which is the Pennsylvania measure of the same, at 2,000 pounds to the ton, with interest from the 19th March, '55, to this day.

To this charge the defendant excepts, and, at his request, the same is reduced to *write;* his exception is sealed, and the charge thus excepted to is filed. Witness my hand and seal.

J. PRINGLE JONES. [L. S.]

[SEAL.] PENNSYLVANIA, *sc.*

The Commonwealth of Pennsylvania to the Judges of the Court of Common Pleas of the county of Berks, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between Charles B. Weaver vs. Isaac Fegely and Jacob Fegely, doing business under the firm of Fegely & Brother, as it is said, manifest error hath intervened, to the great damage of the said plaintiff, as by the complaint of the same we have received information: we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of our supreme court, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the first Monday, the second day of June, A. D. 1856, and this writ, that the record and process

aforesaid being inspected, we may further cause to be done, what of right and according to our laws and customs ought.

Witness the Honorable Ellis Lewis, esq., doctor of laws, chief justice of our said supreme court, at Harrisburg, the twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-six, and of the Commonwealth the eightieth.

Allowed by—

WM. H. MILLER,
Prothonotary of the Middle District.

And now, to wit, October 7th, A. D. 1857, at a supreme court held at Harrisburg, in and for the middle district of the Commonwealth of Pennsylvania, the judgment of the court of common pleas aforesaid is affirmed.

Attest: For WM. H. MILLER, *Pro.*,
GEO. J. SHOEMAKER.

Costs of Pro. Miller	$5 00
Att'y	3 00
	8 00

Rec'd Pro. Miller's costs, five dollars, Nov. 5th, A. D. 1857, of Jno. Banks, esq.

For WM. H. MILLER, *Pro.*,
GEO. J. SHOEMAKER.

$6, paid.
Prec. and aff. filed.
Filed June 8th, 1857.

Exit May 12th, A. D. 1856. Returnable June 2d, 1856. Filed May 13, 1856.

Rule on defts. in error to appear and plead at the return of the within writ.

JNO. BANKS,
Att'y for Pl'ff in Error.

To the honorable the judges of the supreme court: The record in this case is herewith returned, so full and entire as the same was in said court.

J. P. JONES, *P. J.*

Supreme Court of Pennsylvania, Middle District.

CHARLES B. WEAVER, Pl'ff in Error,
vs.
ISAAC FEGELY and JACOB FEGELY, trading under the firm of Fegely & Brother, Def'ts in Error.

The opinion of the court was delivered by Lewis, C. J.

The question raised in this case was decided in Evans v. Myers, 1 Casey, 114. It was not then supposed by any one that Congress had exercised their constitutional power to fix a standard of weights and measures. In the decision since pronounced by Judge Grier, in Holt v. The Steamer Miantonomi, it is fully conceded that they have not hitherto exercised that power. The same concession is made by Judge Story, in his Commentaries on the Constitution. The omission to exercise this power was in fact made a matter of complaint and remonstrance by the legislature of Pennsylvania, in their resolutions of the 9th April, 1834, in which the general government was urged to perform this obligation. The act of assembly of the 15th April, 1834, is based upon the neglect of the federal legislature in this particular, and it is in that act expressly provided that whenever Congress shall establish a standard of weights and measures, the standards named in the State law shall be made to conform to the act of Congress. It is an error to suppose that either the resolution of Congress of the 14th June, 1836, on the acts of 19th May, 1828, and 30th August, 1842, establish a standard of weights and measures to regulate the business transactions of the people. The resolution of 1836 was nothing more than a preliminary step, looking to the exercise of the power at a future day. The act of 1828 had relation merely to the operations of the United States mint; and the act of 1842 was limited exclusively to the collection of the public revenue, under the tariff of that year; there is therefore no foundation whatever for the allegation that Congress has exercised this power, and that there is therefore any actual conflict between the State and national legislation on this subject.

But it seems to be thought by the plaintiff in error, that the mere grant of the power to Congress, although not exercised by that body, extinguished it in the States. This is contrary to the rule of construction adopted by all approved authorities. Alexander Hamilton, who was not likely to relinquish federal authority, where he could maintain it with any show of reason, states the rule thus: This exclusive delegation, or rather this alienation of State sovereignty, exists only in three cases: 1st. Where the Constitution in express terms granted an exclusive authority to the Union. 2d. Where it granted an authority to the Union, and at the same time prohibited the States from exercising the like authority. 3d. Where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally contradictory and repugnant.

It is not pretended that the grant of the power to regulate weights and measures is exclusive in express terms, nor that the States are expressly prohibited from exercising it. The State sovereignties are therefore to be extinguished as regards this subject, if at all, by mere implication. But that implication can only arise

where the State authority is absolutely and totally contradictory and repugnant to the power delegated to Congress. These terms necessarily imply the pre-existence of something to contradict or oppose. But there is nothing whatever, either in the Constitution or in the acts of Congress, which the act of assembly in any respect contravenes or opposes. It is therefore perfectly constitutional. The true rule in this respect was correctly stated by Chief Justice Tilghman, in the celebrated case of Moore v. Huston, 3 S. & R. 179. "Where the authority of the States is taken away by implication, they may continue to act until the United States exercise their power, because until such exercise there can be no incompatibility." The decision of the supreme court of Pennsylvania in the case referred to was affirmed in the Supreme Court of the United States. The frequent application of the principle settled in that case is familiar to all persons conversant with the operations of our government. Congress has power to provide for calling forth the militia; but the States may do the same, so that their enactments do not conflict with the acts of Congress. Moore vs. Houston, 3 S. & R. 170; S. C.; 5 Wheat. 1. Congress may establish uniform bankrupt laws, but the States may exercise the same power within their respective jurisdictions, so long as they do not conflict with existing regulations of Congress. Sturgess v. Crowninshield, 4 Wheat., 122; Ogden v. Saunders, 12 Wheat., 213; Boyle v. Zacharie, 6 Pet. 348. Congress may exercise the taxing power, and so may the States exercise general powers of the like kind. Congress have power to punish for counterfeiting the coin, and had power to punish for counterfeiting the notes of the Bank of the United States, and the States exercised the same power. Fox v. Ohio, 5 How., 432; White v. Commonwealth, 4 Bin. 418; Livingston v. Van Jugen, 9 John. Rep. 267. Congress may grant exclusive privileges for limited times to authors and inventors. The States did the same until Congress exercised the power. 9 John. 267. Congress have power to provide for the recap*tion* of fugitive slaves. The States have the same power, so long as their enactments are not in conflict with the acts of Congress on the subject. It is true that this principle is denied by Justice Story, in Prigg v. Pennsylvania, 16 Peters, 539. But that opinion was on a question which did not arise in the case. It was one of the most mischievous heresies ever promulgated. It was never received as the true construction of the federal Constitution, and the more recent case of Moore v. Illinois, 14 Howard's Rep., 13, shows that it was promulgated without the sanction of a majority of the court.

The United States courts have jurisdiction over controversies between citizens of different States, but no one has ever doubted the jurisdiction of the State courts over the same parties. To hold that the mere grant of power to the federal government over any subject extinguishes State authority over the same subject, would

invalidate thousands of judgments rendered by State courts, in controversies between citizens of different States. In every State in the Union, weights and measures have been constantly governed either by a standard established by a State statute, or by the common law of the State. The power of each State to establish its own common law on this subject has never been denied. If the States have this power, they certainly have the power to enact statutes. The power being acknowledged, it is not for the federal government to interfere with the manner of exercising it. To deny the existence of this authority now would overturn the practice which has been uniformly acted on by all the States during the whole period of their political existence. It would throw all past transactions into confusion, and leave the business community no guide whatever for the future, for there is no certainty that Congress will ever deem it expedient to fix a standard. Chief Justice Tilghman, in The Farmers and Mechanics' Bank v. Smith, 3 S. & R. 69, stated a fact which no one has ever denied, when he declared that "the States have regulated weights and measures at their pleasure, without objection." Their rights to do so until Congress shall act on the subject, admits of no doubt.

Judgment affirmed.

Supreme Court of Pennsylvania, Middle district, Harrisburg.—April Term, A. D. 1856.

CHARLES B. WEAVER	Jno. Banks.
vs.	
ISAAC FEGELY and JACOB FEGELY, doing business under the firm of Fegely & Brother.	No. 86.
	Filbert.

Writ of error to Berks county. Prec. filed May 10th, A. D. 1856. Writ issued May 12th, A. D. 1856. Record filed June 8th, A. D. 1857. Argued June 9th, A. D. 1857, October 7th, A. D. 1857. Opinion by Lewis, Ch. J. Judgment affirmed.

Costs of writ	$6 00
" " Pro. Miller	5 00
" " Attorney	3 00
	$14 00

Record remitted Nov. 5th, A. D. 1857, to John Banks, esq.

I certify the above to be a correct copy of the "docket" entry of the prothonotary of the supreme court of Pennsylvania, in and for the middle district, at Harrisburg.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this fifth day of November, A. D. 1857.

[SEAL.]

For WILLIAM H. MILLER,
Prothonotary,
GEO. J. SHOEMAKER.

I, Walter H. Lowrie, chief justice of the supreme court of Pennsylvania, do hereby certify that William H. Miller, esquire, was, at the time of sig———

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Supreme Court of Pennsylvania, middle district, at Harrisburg, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles B. Weaver, plaintiff in error, and Isaac Fegely and Jacob Fegely, doing business under the firm of Fegely & Brother, defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Charles B. Weaver, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by—

R. C. GRIER,
Associate Just. of Sup. Court of U. S.

To the Honorable the Judges of the Supreme Court of the United States:

The record and proceedings in the within writ described, with all things concerning the same, are hereby sent as therein we are required.

WALTER H. LOWRIE,
Chief Justice of the Supreme Court of Penn'a.

The United States of America to Isaac Fegely and Jacob Fegely, doing business under the firm of Fegely & Brother, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Pennsylvania, middle district, at Harrisburg, wherein Charles B. Weaver is plaintiff in error and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. C. Grier, one of the justices of the Supreme Court of the U. States, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

R. C. GRIER.

Know all men by these presents, that we, Charles B. Weaver, William W. Weaver, and Amos Brower, are held and firmly bound unto Isaac Figely and Jacob Figely, doing business under the firm of Figely & Brother, in the full and just sum of one thousand dollars, to be paid to the said Figely & Brother, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas lately at a supreme court of Pennsylvania, middle district, at Harrisburg, in a suit depending in said court, between Charles B. Weaver, plaintiff in error, and the said Isaac Figely